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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,178	12/01/2003	Dennis O'Brien	S63.2-13172-US01	2053

490 7590 12/27/2007
VIDAS, ARRETT & STEINKRAUS, P.A.
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE, MN 55344

EXAMINER

YABUT, DIANE D

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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12/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/725,178	O'BRIEN ET AL.	
	Examiner	Art Unit	
	Diane Yabut	3734	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11/15/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

The applicant generally argues that Barath does not disclose a radially compressible sheath, since inflation of balloon 2 causes the longitudinal grooves 18 in the sheath 17 to widen and retreat from the tip of the cutting edge 6, thereby exposing the cutting edge 6. However, the examiner asserts that this does not contradict the sheath 17 being radially compressible to expose the incising elements. When the incising elements 6 engage the vessel wall 7 for incision (a progression from Figure 13, which shows the incising elements very close to the vessel wall 7) due to further inflation of the balloon 2, the sheath is radially compressed between the balloon and the vessel wall, and therefore is considered to be radially compressed while exposing the incising elements. The applicant also argues that Shiber does not teach or suggest a pair of sheath members being positioned on the balloon to interpose said incising element between said sheath members in Claim 5, and that Shiber does not teach limitations recited in Claim 1. It is noted that Claim 1 is rejected by Barath only, and Claim 5 is rejected over Barath in view of Shiber. In response to applicant's arguments against the Shiber reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Shiber is meant to be combined with the device of Barath in the rejection of claim 5. The teaching of Shiber suggests that having a sheath 15 (which is disposed around 77) with a pair of sheath members on either side of a cutting blade 54 reduces the likelihood of undesirable injury by the cutting edge during advancement or withdrawal of the device into vasculature, and therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify Barath with Shiber. Lastly, the applicant argues that Shiber does not teach neither azimuthal width of element 15 nor the azimuthal width of blade 54. The examiner disagrees. In Figure 18, as well as Figure 20, it can be seen that the azimuthal width (or "circumferential width") of the sheath member is more than twice the width of the azimuthal width of the blade 54, and the teaching of Shiber would suggest protection of the blade and a reduction of damage or injury during introduction or withdrawal of the device in the vasculature.



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER